



SMALL BUSINESS ADMINISTRATION

13 CFR Parts 109, 115, 120 and 123

RIN: 3245-AI03

Criminal Justice Reviews for the SBA Business Loan Programs and Surety Bond

Guaranty Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend regulations governing SBA's business loan programs (7(a) Loan Program, 504 Loan Program, Microloan Program, Intermediary Lending Pilot Program (ILP), Surety Bond Guarantee Program (SBG), and the Disaster Loan Program (except for the COVID Economic Injury Disaster Loan (EIDL) Disaster Loan Program) for criminal background reviews. The amendments are designed to improve equitable access based on criminal background review of applicants seeking to participate in one or more of these programs.

DATES: SBA must receive comments on this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AI03, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information via e-mail to Dianna.Seaborn@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will

review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205-3645 or Dianna.Seaborn@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The mission of SBA is to “aid, counsel, assist and protect the interests of small business concerns in order to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation.” 15 U.S.C. 631(a). SBA accomplishes this mission, in part, through Capital Access programs that bridge the financing gap in the private market and help businesses of all sizes to recover from disasters. Further, 15 U.S.C. 636(a)(1)(B) states that the Administrator may verify criminal background of the applicant, which grants SBA the flexibility to determine whether and how to consider criminal history in the context of issuing loan guarantees. After conducting a comprehensive study of SBA capital programs’ current policies on individuals with criminal histories, SBA believes the changes proposed herein specifically honor and incorporate other statutory mandates of 15 U.S.C. 631 that recognize the importance of small business development in general as well as the responsibility to increase opportunities for certain groups that may not historically have had equitable opportunities for small business ownership. Supporting these statutory mandates and based on changing conditions in how state and local governments and the private sector have broadened access to business capital and employment opportunities coupled with data and empirical research demonstrating the public safety and economic benefits of doing so. Federal laws have also evolved regarding recidivism and second chances for formerly incarcerated individuals. SBA has determined the need to update regulations to reduce

barriers to participation in these programs for equitable support for small business entrepreneurs with criminal history records. Throughout this proposed rule, “currently incarcerated” means “a person who is currently serving a sentence of imprisonment imposed upon an adjudication of guilt. It does not include a person who is detained but not convicted, such as people in jails.”

SBA is proposing to update the 7(a), 504, Microloan, ILP, SBG and Disaster Loan Program regulations requiring criminal background reviews. Specifically, SBA is revising 13 CFR 109.400(b)(15) on “Eligible Small Business Concerns”; 13 CFR 115.13(a)(2)(i) on “Eligibility of Principal”; 13 CFR 120.110(n) on “What businesses are ineligible for SBA business loans?”; 13 CFR 120.707(a) on “What conditions apply to loans by Intermediaries to Microloan borrowers?”; 13 CFR 123.101(i) on “When am I not eligible for a home disaster loan?”; 13 CFR 123.502(c) on “Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?”; and 13 CFR 123.702(c)(1) and (2) on “Character requirements”.

SBA proposes to revise 13 CFR 109.400(b)(15) for ILP loans to small businesses to remove the restrictions on Associates of an Applicant who are on probation, parole, or who have been indicted but not convicted of a felony or crime of moral turpitude; SBA proposes to revise 13 CFR 115.13(a)(2)(i) for surety bond applicants to remove restrictions on a Principal bidding for a contract (as defined in 13 CFR 115.10) who is under indictment but not convicted, or previously convicted of a felony or received civil judgment regarding business transactions; 13 CFR 120.110(n) for 7(a) and 504 loans to remove restrictions on businesses with an Associate who is on probation, on parole, or is under indictment but not convicted of a felony or any crime involving or relating to financial misconduct or a false statement; 13 CFR 120.707(a) for Microloans to remove restrictions on businesses with an Associate who is currently on probation or parole for

an offense involving fraud or dishonesty; 13 CFR 123.101(i) for physical and economic injury and 123.502(c) for military reservist economic injury disaster loans to remove restrictions regarding principal owners of damaged property who are on probation or parole following conviction for a serious criminal offense. Further, regarding Immediate Disaster Assistance Program (IDAP) loans in Subpart G of 13 CFR 123.702(c)(1) and (2), to remove restrictions for businesses with an Associate who is presently under indictment but not convicted, on parole or probation; that has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted). Accordingly, SBA has determined that reducing barriers to these programs for otherwise qualified applicants where one or more of their associates has the criminal justice system involvement described above is necessary to ensure equity and expand economic opportunities. The ILP Intermediary Program currently considers as ineligible Associates of an applicant that are incarcerated, on parole or probation, or that have been indicted but not convicted for a felony or a crime of moral turpitude. Historically, for the Surety Bond Guarantee Program, SBA considers an applicant ineligible if any of the principals are under indictment but not convicted, previously convicted of a felony or have received civil judgment regarding business transactions. Currently for the 7(a) and 504 business loan programs, SBA considers an applicant ineligible if the business has an Associate who is incarcerated, on probation, on parole, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement, and for Microloans, in addition to incarcerated, an Associate who is on probation or parole for an offense involving fraud or dishonesty. For the Disaster loan program in 13 CFR 123.101(i) and 13 CFR 123.502(c), currently SBA considers ineligible any principal owners of the damaged property that are

currently incarcerated, or on probation or parole following conviction for a serious criminal offenses, with additional specific restrictions for IDAP loans, that include presently under indictment, on parole or probation; charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted).

SBA understands the original intent of these restrictions was to protect the performance of SBA's capital programs against a presumed higher likelihood of default. Data and research, however, refute what may have animated SBA's initial rationale. Importantly, SBA reviewed the relevant research and found no evidence of a negative impact on repayment for qualified individuals with criminal history records in any American business loan program. This lack of data demonstrates that continuing to rely on this restriction for that purpose would contradict the available evidence and although the restrictions may have been originally put in place with the goal of protecting program performance, the lack of data suggests continuing to rely on this restriction would reflect an outdated, inaccurate structural bias against individuals with criminal history records. Specifically, research demonstrates that employment increases success during reentry and decreases the risk of recidivism, with entrepreneurship providing an important and distinct avenue for economic stability given persistent stigma from employers who may decline to hire people with criminal history records. Notably, SBA found several studies showing the difficulty of obtaining employment for formerly incarcerated people (see for example, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men*¹; from the Department of Justice's National

¹ *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men. Investigating Prisoner Reentry National Institute of Justice Grant, Final Report., October 2009.*

Institute of Justice Grant) and a positive link between employment and successful reentry, including avoiding recidivism (see for example, *Local Labor Markets and Criminal Recidivism*² in the Journal of Public Economics). Moreover, because justice-impacted individuals may face barriers in obtaining employment, entrepreneurship can be an attractive option, and SBA found several studies showing the potential for entrepreneurship among Americans with criminal histories (see for example *From Prison to Entrepreneurship*³ in the American Academy of Political and Social Science). Given the lack of data suggesting program performance issues and the breadth of research indicating the benefits, SBA is proposing to remove unnecessary restrictions that limit access to capital for justice-impacted individuals. Furthermore, by providing an employment opportunity for formerly incarcerated individuals through entrepreneurship and/or growing a small business, SBA seeks to strengthen economic opportunity and growth as well as support public safety by reducing recidivism.

SBA believes that modernizing the character requirements regarding consideration of the criminal history records of SBA loan applicants and Associates of business loan applicants is timely and appropriate to reflect changes in the public and private sector that have reduced unnecessary barriers to access to capital and successful reentry. Doing so also promotes equitable consideration for applicants who are ineligible for federal assistance in SBA's programs due to pending indictments that have not led to convictions; prior convictions that have been adjudicated; and terms of incarceration that have been served. These changes create the opportunity for formerly incarcerated individuals to participate in SBA's loan and surety bond programs and engage in

² *Local Labor Markets and Criminal Recidivism*, ScienceDirect, Journal of Public Economics, Volume 147, March 2017, Pages 16-29

³ *From Prison to Entrepreneurship: Can Entrepreneurship be a Reentry Strategy for Justice-Impacted Individuals?* <https://doi.org/10.1177/00027162221115378>, Sage Journals, Volume 701, Issue 1, September 14, 2022.

entrepreneurial endeavors that research shows statistically decrease recidivism based on employment and continued engagement within their communities, thereby strengthening public safety.⁴ These proposed changes will enable SBA programs to provide capital in the form of Surety Bonds, 7(a), 504, Microloan, ILP, and Disaster loans to more qualified small businesses and disaster survivors, which will strengthen our economy. SBA does not propose to remove or change 13 CFR 120.110(q) regarding ineligibility due to prior default and loss to the Federal Government. Finally, SBA will continue the pandemic implemented practices to access certain public data to perform fraud checks prior to approval of any 7(a), 504 or Disaster loans.

The Agency requests comments on all aspects of the revisions in this proposed rule and on any related issues affecting the 7(a) Loan, 504 Loan, Microloan, ILP, Surety Bond Guarantee, and Disaster Loan Programs.

II. Section-by-Section Analysis

Section 109.400(b)(15) Eligible Small Business Concerns

Current section 109.400(b)(15) for the ILP Program states that ineligible businesses are those with an Associate who is currently incarcerated, on probation, on parole, or has been indicted but not convicted of a felony or crime of moral turpitude. SBA proposes to revise this regulation to remove those barriers while maintaining the prohibition against only those businesses with an Associate who is currently incarcerated at the time of application or any time thereafter, and between the time of application and disbursement of loan proceeds. This revision is therefore narrowly tailored to reduce barriers to access for qualified formerly incarcerated small business owners who may be

⁴ Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks | RAND Bushway, Shawn D., Brian G. Vegetabile, Nidhi Kalra, Lee Remi, and Greg Baumann, Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks. Santa Monica, CA: RAND Corporation, 2022.

eligible to receive a loan through the ILP Pilot from an existing Intermediary with remaining funds to lend.

Section 115.13(a)(2)(i) Eligibility of Principal

Current section 115.13(a)(2)(i) for the Surety Bond program states that ineligible businesses are those with a Principal who is under indictment but is not convicted, or has been previously convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships. SBA proposes to remove those barriers while maintaining the prohibition against only those businesses with a Principal who is currently incarcerated. This revision is therefore narrowly tailored to reduce barriers to access for qualified justice-impacted small business owners to compete for Federal and other contract opportunities by obtaining guarantees for surety bid and final payment and/or performance bonds.

Section 120.110(n) What businesses are ineligible for SBA business loans?

Current section 120.110(n) for the 7(a), 504 and Microloan programs states that ineligible businesses are those with an Associate who is currently incarcerated, on probation, on parole, or is under indictment but not convicted for a felony or any crime involving or relating to financial misconduct or a false statement. SBA proposes to revise this regulation to remove some of those barriers while maintaining the prohibition against businesses with an Associate who is currently incarcerated. This revision is therefore narrowly tailored to reduce barriers to access for qualified justice-impacted small business owners. Section 636(a)(1)(B) of the Small Business Act states that SBA may verify an applicant's criminal history background, but does not require such verification, nor does it prohibit loans for people formerly incarcerated. Lenders, CDCs, and Microloan Intermediaries make risk-based lending decisions. Some lenders include conducting criminal history background checks and others do not. SBA's proposed

revision does not impact a lender's ability to continue to do so, in accordance with their own policies, provided they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws.

Section 120.707(a) - What conditions apply to loans by Intermediaries to Microloan borrowers?

SBA proposes to revise section 120.707(a) to remove some of those barriers while maintaining the prohibition against where there is an Associate on parole or probation. For public safety reasons, however, SBA will retain the prohibition against making a loan to a childcare business, where an Associate is on probation or parole for an offense against children. This change will closely align with the proposed requirements for all business loan programs regarding the determination that an applicant with a Principal or Associate that is currently incarcerated is ineligible for assistance and support the flexibility and access to capital for qualified justice-impacted business owners.

Section 123.101(i) - When am I not eligible for a home disaster loan?

Current section 123.101(i), for the Disaster loan program states that SBA considers ineligible any principal owners of the damaged property that are presently incarcerated, or on probation or parole following conviction for a serious criminal offense. SBA proposes to revise section 123.101(i) to state that the applicant is ineligible to receive a disaster loan only when any principal owner of a home that sustained damage is currently incarcerated. The eligibility requirements in 123.101 are cross referenced in 123.201 and 123.301; therefore, this proposed change will also apply to business property loans as well as economic injury loans. Notwithstanding SBA's proposed change, in accordance with the requirements of Pub. L. 90-488 (August 1, 1968) and as reflected in 123.101(a), SBA will maintain its existing prohibition against any person who has been convicted of committing a felony during and in connection with a riot or civil disorder for a period of one year after the date of their conviction. This change will align the

requirements proposed for all SBA loan programs regarding persons currently incarcerated applicants currently serving a term of incarceration and support the flexibility and access to capital for qualified justice-impacted disaster survivors.

Section 123.502(c) - Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

Current section 123.502(c), for the Disaster loan program states that SBA considers ineligible any principal owners of the damaged property that are presently incarcerated, or on probation or parole following conviction for a serious criminal offense. SBA proposes to revise section 123.502(c) to state that for Military Reservist Economic Injury Disaster loans (MREIDL), the applicant is ineligible to receive a disaster loan only when an Associate of a business that sustained damage is currently incarcerated. Notwithstanding SBA's proposed changes for disaster loans, in accordance with the requirements of Pub. L. 90-488 (August 1, 1968) and as reflected in 123.502(a), SBA will continue to consider as ineligible to receive any benefit under any law of the United States providing relief for disaster victims, any person who has been convicted of committing a felony during and in connection with a riot or civil disorder for a period of one year after the date of their conviction. This change will align the requirements proposed for all SBA loan programs regarding individuals currently incarcerated and support the flexibility and access to capital for qualified justice-impacted small businesses.

Section 123.702(c)(1) and (2) – What are the eligibility requirements for any IDAP Loan?

Current section 123.702(c)(1) and (2), for IDAP loans state that SBA considers ineligible any applicant business that has an Associate that who is presently under indictment but not convicted, on parole or probation; charged with, arrested for,

convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted). SBA proposes to revise section 123.702(c)(1) and (2) to state that the applicant is ineligible to receive an IDAP loan only when any principal owner of a home or business that sustained damage is currently incarcerated. Notwithstanding SBA's proposed change, in accordance with the requirements of Pub. L. 90-488 (August 1, 1968) and as reflected in 123.101(a), SBA will continue to consider as ineligible to receive any benefit under any law of the United States providing relief for disaster victims, any person who has been convicted of committing a felony during and in connection with a riot or civil disorder for a period of one year after the date of their conviction.

In addition to applicants in all programs certifying to having no owners or Associates that are currently incarcerated, SBA proposes to access certain external and widely acceptable and reliable databases to verify eligibility regarding incarceration and criminal history status. While increasing loan volume, SBA believes that these changes do not compromise the credit quality and performance of the loan portfolios. In fact, the Microloan and SBG programs have permitted loans to businesses with individuals on parole or probation at no negative impact to overall program performance.

As published in June 2021, The RAND Research Brief⁵ estimated that over 200,000 small businesses were affected or disqualified from participating in the Paycheck Protection Program due to SBA's rules regarding current indictments and incarceration, and prior criminal convictions and criminal justice system involvement current incarcerations. Predictably, the survival rate of legitimate small businesses that did not

⁵[The Prevalence of Criminal Records Among Small Business Owners | RAND](#) **How Many Business Owners, Businesses, and Employees Are Affected by PPP Restrictions?**

receive assistance during the pandemic is lower than those that did receive support. Due to significant barriers to employment for individuals with criminal history records, self-employment and entrepreneurship are often vital avenues to successful reentry and employment. In fact, 28 percent of individuals with criminal history records are self-employed.⁶ Accordingly, SBA's general and targeted loan programs must be a resource that provide options that support economic success and growth for individuals and communities, from basic self-employment to becoming employers within communities, and that support successful reentry outcomes, thereby strengthening public safety. Research is clear that reducing barriers to employment reduces recidivism and supports successful reentry, leading to better outcomes for individuals and communities⁷--all of which underscore the necessity for SBA to revisit and update these regulations to remove barriers to small-business employment and business ownership.

Under the proposed rule, for each program, SBA, Lenders, CDCs, Microloan intermediaries, Sureties, and ILP Intermediaries, will consider the applicant business ineligible based on any criminal history record only when there is an Associate that who is currently incarcerated at the time of application or between the time of application and disbursement of loan proceeds or bond execution.

SBA's proposed rule also streamlines SBA's lending criteria by reducing the number of factors that are required to be applied in determining eligibility based on criminal history records of small business owners. Lenders, CDCs, and Microloan Intermediaries make risk-based lending decisions. Some lenders include conducting criminal history background checks and others do not. SBA's proposed revision does not impact a lender's ability to continue to do so, in accordance with their own policies,

⁶ <https://onlinelibrary.wiley.com/doi/10.1002/pam.22438> **Criminal Justice Involvement, Self-employment, and Barriers in Recent Public Policy.** *Journal of Policy Analysis and Management*, 42(1),11-4

⁷ Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks | RAND

provided that they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws.

Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is a “significant regulatory action” under Executive Order 12866, as amended by Executive Order 14094. SBA has drafted a Regulatory Impact Analysis for the public’s information in the next section. Each section begins with a core question.

A. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

In accordance with statutory mandates of 15 U.S.C. 631 above, the Agency believes it needs to reduce regulatory restrictions for applicants with Associates or Principals based on criminal histories for the SBA Disaster, 7(a), 504, Microloan, ILP and SBG programs by reducing the requirement for criminal history records consideration to only applicants with a Principal or Associate currently incarcerated in the manner proposed above. or employment as an Associate at a small business Many formerly incarcerated persons experience significant barriers in accessing employment and capital and credit often necessary to start a business. SBA’s proposed revisions will remove barriers to access capital for qualified applicants. and employment. SBA will reduce the administrative burden on applicants as well as the need for fingerprints by providing a single succinct directive that SBA determines any applicant with a Principal or Associate that is currently incarcerated to be ineligible with no further requirements for disclosure of prior criminal records.

B. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the 7(a), 504, Microloan, ILP, SBG and Disaster Loan Programs under these proposed regulations because all loans submitted must always meet Loan Program Requirements. For the SBG program, this change will benefit small contractors with Principals on parole, probation or convicted of crimes who will now be able to apply for small contracting opportunities.

SBA does not receive information from lenders on how many applicants they decline for 7(a), 504, and Microloans. SBA has received substantial feedback and research from stakeholders that its current rules have presented broad barriers to otherwise qualified individuals with criminal history records that seek financing to start, run, or expand small businesses. This aligns with the statutory mandates in 15 U.S.C. 631 and supports the inference that reducing or removing barriers will result in additional applications from those businesses with justice-impacted owners who may have been deterred from applying due to the current prohibitions related to criminal history records. In the 7(a) and 504 programs, for formerly incarcerated individuals and people not on parole or probation, out of more than 50,000 thousand loans made annually, SBA lenders have submitted to SBA for review approximately 586 Character determination requests containing information on criminal history records involving felonies. SBA declines on average only 17-23 of the requests per year due to the nature of the offense or incomplete judicial records. SBA's Disaster Loan Program has declined 93 individuals for criminal history record background checks between 2018 and 2022, with an additional 1,026 files withdrawn by applicants prior to review during the same period. Microloan Intermediaries do not submit loans to SBA for approval, so SBA does not have data for criminal history records of Microloan applicants. Accordingly, SBA's proposed changes would result in the same nominal concerns. Finally, Lenders, CDCs, and Microloan

Intermediaries make risk-based lending decisions. Some lenders include conducting criminal history background checks and others do not. SBA's proposed revision does not impact a lender's ability to continue to do so, in accordance with their own policies, provided that they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws.

C. Alternatives

What alternatives have been considered?

SBA considered the impact of maintaining the current rules that deem as ineligible businesses with Principals or Associates currently incarcerated, on parole or probation or convicted of certain financial and other crimes. This would result in continuing barriers for small businesses owned by individuals with criminal history records. Instead, SBA's proposal to remove all except currently incarcerated Principals or Associates as ineligible mitigates the risk to SBA of making guarantees and loans to businesses whose Principals or Associates lack the ability to manage and execute day-to-day business operations. And for disaster survivors, SBA's proposed changes will increase equal access and support for recovery.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule would require that the following forms be revised: SBA Form 1919, “Borrower Information Form,” SBA Form 1920, “Lender’s Application for Loan Guaranty for all 7(a) Loan Programs,” SBA Form 1244, “Application for Section 504 Loans,” SBA Form 5 – Disaster Business Loan Application, and SBA Form 5C – Disaster Home/Sole Proprietor Loan Application and SBA Form, SBA Form 994 “Application for Surety Bond Guarantee Assistance”.

SBA Forms 1919 and 1920 are approved under OMB Control number 3245-0348. SBA Form 1244 is approved under OMB Control number 3245-0071. SBA Form 5 is approved under OMB Control number 3245-0017 and SBA Form 5C is approved under OMB Control number 3245-0018. SBA Form 994 is approved under OMB Control number 3245-0007.

SBA will revise SBA Form 1919, SBA Form 1920, and SBA Form 1244 to conform to the eligibility change at 13 CFR 120.110(n). When small businesses apply for 7(a) or 504 loans, the estimated hour burden for applicants and lenders will decrease because the criminal history analysis and collection of data will no longer be required. SBA will revise SBA Form 5 and 5C to conform to the eligibility change at 13 CFR 123.101(i). When disaster survivors apply for disaster loans, the estimated hour burden

for applicants will decrease because the criminal history record analysis and collection of data will be reduced.

SBA will revise SBA Form 994 to conform to the eligibility change at 13 CFR 115.13(a)(2)(i). When small businesses apply for surety bond guarantees, the estimated hour burden for applicants will decrease because the criminal history record analysis and collection of data will no longer be required.

Regulatory Flexibility Act, 5 U.S.C. 601- 612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires the agency to “prepare and make available for public comment an initial regulatory analysis” which will “describe the impact of the proposed rule on small entities.” Although the rulemaking may potentially impact a small percentage of loans reviewed by 7(a) Lenders, CDCs, Microloan Intermediaries, ILP Intermediaries, the 44 Sureties that participate in the SBG Program, and SBA regarding the disaster loans, SBA does not believe the impact will be significant because this proposal reduces regulations and procedures. However, there may be impacts due to increased loans for businesses with Principals or Associates that have a criminal history record but are not currently incarcerated.

SBA reviews approximately 586 Character determination requests annually and declines 3 - 4 percent, or 17 – 23 requests, due to the nature of the offense or incomplete judicial records. The proposed revisions to §120.110(n) will eliminate the need for 100 percent of these character determination reviews. SBA Form 1919, “SBA 7a Borrower Information Form,” is the application form for the 7(a) Loan Program. SBA Form 1244, “Application for Section 504 Loans,” is the application form for the 504 Loan Program. Each application includes 3 questions that Associates of the applicant must answer regarding their criminal history records. Under the proposed revisions, SBA will eliminate the three current questions and replace them with one new question regarding

incarceration. SBA estimates that all applicants for the 7(a) Loan Program and 504 Loan Program will save 5 minutes completing the applications due to these revisions. Intermediaries for the Microloan Program use their own applications for Microloan borrowers, but it is reasonable to assume similar time savings. The 7(a) Loan Program, 504 Loan Program, and Microloan Program make approximately 68,677 loans per year. Saving 5 minutes for each application will result in total time savings of 5,723 hours annually.

List of Subjects

13 CFR Part 109

Community development, Loan programs-business, Reporting and recordkeeping requirements, small businesses.

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, small businesses, Surety bonds

13 CFR Part 120

Community development, Loan programs-business, Reporting and recordkeeping requirements, small businesses.

13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 109, 115, 120 and 123 as follows:

PART 109 – INTERMEDIARY LENDING PILOT PROGRAM

1. The authority citation for 13 CFR part 115 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), and 636(l).

2. Amend § 109.400 by revising paragraph (b)(15) to read as follows:

§ 109.400 Eligible Small Business Concerns

* * * * *

(b) * * *

(15) Businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

PART 115-SURETY BOND GUARANTEES

3. The authority citation for 13 CFR part 115 continues to read as follows:

Authority: 5 U.S.C. app.3: 15 U.S.C. 636i, 687b, 687c, 694a, and 694b, note.

4. Amend § 115.13 by revising paragraph (a)(2)(i) to read as follows:

§ 115.13 Eligibility of Principal.

* * * * *

(a) * * *

(2) * * *

(i) The Person is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty; or

* * * * *

PART 120--BUSINESS LOANS

5. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, and 697, 697a and e, and note; Pub. L. 116-260, 134 Stat. 1182.

6. Amend § 120.110 by revising paragraph (n) to read as follows:

§ 120.110 What businesses are ineligible for SBA business loans?

* * * * *

(n) Businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty; or

* * * * *

7. Amend § 120.707 by revising paragraph (a) to read as follows:

§ 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers?

(a) Except as otherwise provided in this paragraph, an Intermediary may only make Microloans to small businesses eligible to receive financial assistance under this part. A borrower may also use Microloan proceeds to establish a nonprofit childcare business. An Intermediary may not make Microloans to businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or to childcare businesses with an Associate who is currently on probation or parole for an offense against children. Proceeds from Microloans may be used only for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. SBA does not review Microloans for creditworthiness.

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PART 123 – DISASTER LOAN PROGRAM

8. The authority citation for 13 CFR part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

9. Amend §123.101 by revising paragraph (i) to read as follows:

§ 123.101 When am I not eligible for a home disaster loan?

* * * * *

(i) You or other principal owners of the damaged property are currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

10. Amend §123.502 by revising paragraph (c) to read as follows:

§ 123.502 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

* * * * *

(c) Any of your business' principal owners is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

11. Amend 123.702 by:

- a. Revising paragraph (c)(1);
- b. Removing paragraph (c)(2); and
- c. Redesignating paragraphs (c)(3) through (5) as paragraphs (c)(2) through (4).

The revision read as follows:

§ 123.702 What are the eligibility requirements for an IDAP loan?

* * * * *

(c)***

(1) is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

Isabella Casillas Guzman,

Administrator.

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